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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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EXAMINER

TRUONG, THANH K

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3721

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |                                   |  |
|------------------------------|-------------------------------|-----------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/628,417 | Applicant(s)<br>ARGENTO, SETTIMIO |  |
|                              | Examiner<br>Thanh K. Truong   | Art Unit<br>3721                  |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2004.  
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.  
 4a) Of the above claim(s) 15 is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-14 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This action is in response to applicant's communication received on August 3, 2004.

#### ***Election/Restrictions***

2. Applicant's election without traverse of Group I, claims 1-14 in the reply filed on August 3, 2004 is acknowledged.
3. Claim 15 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on August 3, 2004.

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 5-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5, the word "airborne", line 12, is misleading, because it gives the impression that the jackhammer is moved through air without any attachment to the ground.

Claim 11, the phrase "movable vertically over ground" is vague and indefinite, because when some thing is moved vertically, it is moved up and down, not over the ground.

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***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Morissette (6,752,221).

Morissette discloses an apparatus comprising:

a ground support member (26);

a base (120) mounted onto the support member and moveable relative thereto;

an articulated arm (22) having first and second ends, moveably mounted onto the base at the first end, the arm comprising a number of displacement joints, the articulated arm further comprising a jackhammer (H) support member at the second end for interconnecting the arm to the jackhammer (figure1);

power means (30, 31) for power biasing the articulated arm into a continuously erected posture (figures 1-3, column 3, lines 29-33);

wherein at least three of the displacement joints (28, 126, 128) are pivot joints, and wherein one of the displacement joints (106) is a translation joint (figures 4-6).

Morissette further discloses:

first mounting means (124), mounting the arm inner end to the base means for free relative movement of the articulated arm relative to the base means;

a command and control unit (50), for securing and operating the jackhammer in a continuously loadless fashion, the unit defining an elongated main frame having a first end portion with a jackhammer attachment assembly (figure 3) and a second end portion opposite the first end portion with a manual command and control template; and

second mounting means (34, 42), interconnecting the jackhammer attachment assembly and the arm outer end for relative movement therebetween, for continuously maintaining the jackhammer spacedly over ground so that the weight load of the jackhammer be fully compensated (column 1, lines 54-56);

wherein the range of reach of the jackhammer attachment assembly over ground sweeps a volume represented by a virtual half sphere with the base means forming approximately the center of the half sphere (when the cylinder 27 is extending and the finger 136 is removed from notches 118, the pad 120 capable of rotating a complete circle around plate 116 – figure 10);

control means (50) operatively connected to and controlling the power means (column 5, lines 56-60); the second mounting means includes means (34, 42) for anchoring the jackhammer main body at the center of gravity thereof; the manual command and control template includes means for remote control of the power means (column 5, lines 56-60); translation motion means (88, 102), integral to the main frame of the command and control unit for relative movement of the jackhammer attachment assembly relative to the manual command and control template; the second power

means (C), operatively connected to the manual command and control template for selectively powering the jackhammer head in a reciprocation motion; and mounting means (124) includes a turntable rotatably supporting the arm inner end about an axis (126) transverse to the turntable.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 11, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morissette (6,752,221).

As discussed above in paragraph 7 of this office action, Morissette discloses the claimed invention, but does not expressly disclose that the base means includes a lift platform movable vertically.

The examiner takes an Official Notice that it is well known in the art to mount the base of an apparatus, such as the one discloses in Morissette, to a platform to make the apparatus more portable for transporting to a different working site. Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified Morissette's apparatus by mounting the base to a platform so that it can be lifted vertically above the ground and transport over the ground to provide the portable capability to the apparatus.

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Regarding to claim 14, Morissette discloses the claimed invention, but does not expressly disclose that the turntable includes a central axle with low-friction PTFE coating. The examiner takes an Official Notice that it is well known in the art to use low-friction material such as PTFE coating in place like rotating bearing surfaces to provide a smooth rotation, and to reduce the heat between the moving parts. Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified Morissette's apparatus by using the low-friction PTFE coating in the axle of the turntable for better rotation between the moving surfaces.

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morissette (6,752,221) in view of Jarvis (5,086,705).

As discussed above in paragraph 7 of this office action, Morissette discloses the claimed invention, but does not expressly disclose the elongated rail member, fixedly mounted to the platform, a carriage rollingly mounted to the rail member.

Jarvis discloses (figures 1-4) an apparatus comprising: an elongated rail member (14) fixedly mounted to a platform (42), and a carriage (12) rollingly mounted to the rail member, a turntable (32, 34) fixedly secured to the carriage transverse frame (figure 3). Jarvis' apparatus provides a combined linear and circular position system. Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified Morissette's apparatus by using the system that

combining the linear position and the circular position in one as taught by Jarvis providing improved capability to the modified portable platform.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

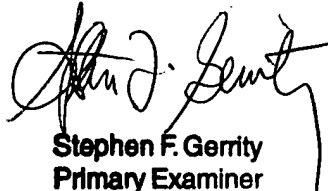
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K. Truong whose telephone number is 571-272-4472. The examiner can normally be reached on Mon-Thru 8:00AM - 6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tkt

June 15, 2005.

  
**Stephen F. Gerrity**  
Primary Examiner